

## Forest Service, USDA

## §217.5

*Notice of appeal* is the written document filed with a Reviewing Officer by one who objects to a decision covered by this part and who requests review by the next higher line officer.

*Participants* include appellants, intervenors, the Deciding Officer, and the Reviewing Officer.

*Record of Decision* is the document signed by a Deciding Officer recording a decision that was preceded by preparation of an environmental impact statement (40 CFR 1505.2).

*Reviewing Officer* is the line officer one administrative level higher than the Deciding Officer or, in the case of a discretionary review, one level higher than the line officer who issued a first-level appeal decision.

[54 FR 3357, Jan. 23, 1989; 54 FR 13807, Apr. 5, 1989, as amended at 55 FR 7895, Mar. 6, 1990; 58 FR 58915, Nov. 4, 1993]

### §217.3 Decisions subject to appeal.

(a) The following decisions are subject to appeal under this part:

(1) Decisions to approve, amend, or revise a National Forest Land and Resource Management Plan including project or activity decisions for which environmental effects have been analyzed and disclosed within a final EIS and documented in a Record of Decision including approval, significant amendments, or revisions of a land and resource management plan.

(2) Decisions to approve or amend a regional guide prepared pursuant to 36 CFR part 219 and documented in a Decision Notice or Record of Decision are subject to appeal under this part, except as provided in §217.4.

(b) Decisions as defined in paragraph (a) of this section and documented in a Decision Notice or a Record of Decision that are made by a subordinate Forest Service staff officer acting within delegated authority are considered to be decisions of the Forest Service line officer.

[58 FR 58915, Nov. 4, 1993]

### §217.4 Decisions not subject to appeal.

The following decisions are not subject to appeal under this part.

(a) Decisions on projects or activities implementing National Forest Land and Resource Management Plans in-

cluding project decisions that include a non-significant amendment to a National Forest Land and Resource Management Plan.

(b) Preliminary planning decisions or preliminary decisions as to National Environmental Policy Act or National Forest Management Act processes made prior to release of final plans, guides, and environmental documents.

(c) Recommendations of Forest Service line officers to higher ranking Forest Service or Departmental officers or to other entities having final authority to implement the recommendations in question, such as wilderness and wild and scenic river recommendations.

[58 FR 58915, Nov. 4, 1993]

### §217.5 Giving notice of decisions subject to appeal.

(a) For decisions subject to appeal under this part, Deciding Officers shall promptly mail the appropriate decision document (§217.3(a)(1)) to those who, in writing, have requested it, and to those who are known to have participated in the decisionmaking process.

(b) The Deciding Officer shall also give notice of decisions appealable under this part as follows:

(1) For all initial decisions of the Chief, notice shall be published in the FEDERAL REGISTER.

(2) For all other decisions, legal notice of the decision shall be published in a newspaper of general circulation identified pursuant to the requirements of paragraph (d) of this section. Deciding Officers may, at their discretion, also publish notice of their decisions in additional newspapers. Where a Deciding Officer elects to publish such additional notices, they shall be published after an initial legal notice has been published in the principal newspaper identified in the biannual FEDERAL REGISTER notice provided for in paragraph (d) of this section. Any such additional newspaper notices shall indicate the date that the appeal period ends, which shall be calculated based on the date of publication of the initial notice in the principal newspaper identified in the biannual FEDERAL REGISTER notice.

(c) All notices published pursuant to this section shall include a concise description of the decision made by title

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or subject matter, the date of the decision, the name and title of the official making the decision, and information on how to obtain a copy of the decision, and shall specify that the appeal period begins the day following the notice's publication as provided for in §217.8(b)(1).

(d) At least twice annually, in April and in October, each responsible Forest Service officer shall, through FEDERAL REGISTER notice, advise the public of the principal newspaper to be utilized for publishing legal notices required by this section. The FEDERAL REGISTER notice shall also list all additional newspapers which the Deciding Officer expects to use for purposes of providing additional notice pursuant to paragraph (b) of this section.

[54 FR 3357, Jan. 23, 1989, as amended at 55 FR 7895, Mar. 6, 1990; 56 FR 4918, Feb. 6, 1991]

### §217.6 Participants.

(a) Other than Forest Service employees, any person or any non-Federal organization or entity may challenge a decision covered by this part and request a review by the Forest Service line officer at the next administrative level.

(b) An intervenor as defined in §217.2 of the subpart.

### §217.7 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the notice of appeal is filed with the Secretary of Agriculture. Review by the Secretary is wholly discretionary. Within 15 days of receipt of a notice of appeal, the Secretary shall determine whether or not to review the decision in question. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) *Decisions made by Forest Supervisors and Regional Foresters.* The levels of available review are as follows:

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(1) If the decision is made by a Forest Supervisor, the notice of appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the notice of appeal is filed with the Chief of the Forest Service.

(c) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§217.11) are subject to discretionary review as follows:

(1) If the initial Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

(d) *Discretionary review of appeal decisions.* Appeal decisions rendered by Regional Foresters and the Chief pursuant to this part are subject to discretionary review as follows:

(1) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.

(2) If the Reviewing Officer was the Chief, the Secretary of Agriculture has discretion to review.

[54 FR 3357, Jan. 23, 1989, as amended at 54 FR 34509, Aug. 21, 1989; 58 FR 58915, Nov. 4, 1993]

### §217.8 Appeal process sequence.

(a) *Filing procedures.* To appeal a decision under this part, a person or organization must:

(1) File a written notice of appeal, in duplicate, with the next higher line officer in accordance with the provisions of §217.9 of this part.

(2) File the notice of appeal within 45 days of the date specified in the published legal notice for non-significant amendments to land and resource management plans documented in a Decision Notice or Record of Decision.

(3) File the notice of appeal within 90 days of the date specified in the published legal notice for land and resource management plan approvals, significant amendments, or revisions, and for other programmatic decisions documented in a Record of Decision.

(b) *Computation of time periods.* (1) The day after the published notices required in §217.5(b) is the first day of the appeal period provided for in paragraphs (a)(2) and (a)(3) of this section.